

CONSULTATION, ADVICE, AND CLEARANCE
CHM 58

58. CONSULTATION, ADVICE, AND CLEARANCE:

58.1 Consultation:

- 58.1.1** The regions are encouraged to call the Office of the General Counsel to discuss novel issues or questions relating to the Case Handling Manual or the Hearing Officer's Guide. The discussions serve as a mutual exchange of ideas.
- 58.1.2** Throughout the CHM certain procedural matters are discussed that raise unique representation issues. An informal discussion between the regions and headquarters is beneficial to determine whether there is a need for a national policy on the issue.

Listed below are some, but not all, of the issues that regions "run by" the Office of the General Counsel if they arise during the processing of representation cases.

- 58.1.2.1** questions concerning the appropriateness of petitions with multiple purposes ([CHM 3.7](#));
- 58.1.2.2** questions concerning a party's standing to have a petition processed ([CHM 4](#));
- 58.1.2.3** issues concerning a local union's standing to file a petition after it has been placed in trusteeship ([CHM 4.8](#));
- 58.1.2.4** questions about timeliness issues raised by filing an amended petition ([CHM 13.6](#));
- 58.1.2.5** questions about notifying and serving copies of opening letters on potential "interested parties" ([CHM 15.5](#), [15.7](#), and [17.13](#));
- 58.1.2.6** guidance when an agency refuses to post the notice of petition ([CHM 16.6](#));
- 58.1.2.7** questions about the policy on filing cross-petitions versus interventions ([CHM 17.1.3](#));

- 58.1.2.8 questions concerning a party's standing to intervene or cross-petition ([CHM 17.2](#));
- 58.1.2.9 issues related to the petitioner's attempts to use the same showing that was submitted with an original petition ([CHM 18.7.5](#));
- 58.1.2.10 when a national union challenges a local union's disclaimer of interest in representing its certified unit ([CHM 20.9.1](#));
- 58.1.2.11 questions concerning deferring a petition pending an appeal of a decision based on a challenge to the status of a labor organization ([CHM 19.6](#), [28.34](#) and [55](#));
- 58.1.2.12 questions concerning a party's compliance with § 2422.15 ([CHM 22](#));
- 58.1.2.13 when an issue develops involving a dispute regarding the authority of a party to file a petition to consolidate existing units (such as between a local which has exclusive recognition and the national office of a labor organization purportedly acting on behalf of its various exclusive representatives) ([CHM 23.10.2](#));
- 58.1.2.14 when the agency or the labor organization requests an election in a unit consolidation case ([CHM 20.1.6](#) and [23.11.2](#));
- 58.1.2.15 guidance on pooling ballots ([CHM 28.15.4](#));
- 58.1.2.16 if the petitioner, a local union, refuses to add the petitioned-for unit to the consolidated unit for which the national union is the exclusive representative ([CHM 28.16.1](#));
- 58.1.2.17 whenever questions arise concerning setting an eligibility date that is after the date the Election Agreement is approved, e.g., due to an expansion or contraction of the unit ([CHM 28.18.3.1](#));
- 58.1.2.18 when the region is assisting the parties in a major reorganization ([CHM 62.5](#)); or
- 58.1.2.19 when the region receives an inquiry concerning AFL-CIO no-raiding, Article XX or XXI issues ([CHM 65](#)).

- 58.2 Submission for advice or clearance:** A request for case handling advice or clearance is presented to the Office of the General Counsel by memorandum or telephone, as the circumstances require. A request by memorandum sets forth the issue, relevant facts, applicable law, an analysis of fact and law, and a recommendation.
- 58.3 Advice** is requested by the regions when unique or novel issues arise in a representation proceeding requiring guidance and direction from the Office of the General Counsel. Regions are required to submit a case for advice if it involves:
- 58.3.1** novel legal questions or factual situations ([CHM 27.6](#));
 - 58.3.2** issues involving nationwide policy;
 - 58.3.3** issues related to claims made pursuant to section 7111(f)(1) of the Statute ([CHM 20.1.8](#), [23.9.3](#), [28.34.3](#));
 - 58.3.4** disclaimers of interest that are filed by an exclusive representative under questionable circumstances as discussed in [CHM 20.9](#);
 - 58.3.5** an agency's refusal to cooperate or an incumbent's refusal to cooperate (while failing to disclaim interest in representing employees) in any representation proceeding ([CHM 24b](#) and [CHM 28.10](#) involving election proceedings);
 - 58.3.6** claims of accretion where the investigation establishes that the acquired employees constitute a separate appropriate unit and also could be included properly in the existing unit (*RCL 3*);
 - 58.3.7** issues relating to professionals voting in certain elections ([CHM 28.15.1.1](#));
 - 58.3.8** questions about handling complicated elections involving groups of residual employees when there is an intervenor ([CHM 28.15.3 and 4](#));
 - 58.3.9** self-determination elections resulting from a reorganization ([CHM 28.15](#));
 - 57.3.10** issues concerning the Regional Director's authority pursuant to

§ 2422.29(a)(4) when additional objections are raised by a party during an objections investigation ([CHM 50.10.1](#));

- 58.3.11 permission to issue a certification when a non-party files an objection to an election ([CHM 50.8](#));
- 58.3.11 action on an Authority decision to give option to region to stay an election and/or impound ballots ([CHM 28.29.2](#) and [CHM 55.2](#));
- 53.3.12 allegations in unfair labor practice cases or objections that any of the parties failed to comply with § 2422.34(a) during the pendency of a representation proceeding ([CHM 62.3](#) and [62.4](#));
- 53.3.13 issue an investigatory subpoena ([CHM 23.5.3](#));
- 53.3.14 challenges to the validity of the showing of interest ([CHM 18.19.11.2c](#));
- 53.3.15 an election involving a group of residual employees when there is an intervenor (*RCL 2B*);
- 53.3.16 questions related to a self-determination election in a reorganization, where the acquired employees constitute an appropriate unit, but there are competing claims for representation. Combining the acquired employees with employees in an existing unit is also appropriate (*RCL 3C*);
- 53.3.17 in a reorganization involving more than two unions in which competing claims of successorship and accretion are raised and prong 2 of the successorship criteria is not met (*RCL 3F*);
- 53.3.18 technical or nominal changes in the name of the exclusive representative without following the *Montrose* criteria (*RCL 7A2*);
- 53.3.19 *Montrose* cases: (*RCL 7D*)
 - a. involving an agency's failure to recognize the incumbent when a trusteeship is imposed after a *Montrose* petition is filed.
 - b. raising issues of the continuation of NFFE as a labor organization.
 - c. where the Region determines that a trusteeship imposed

- d. prior to the filing of a *Montrose* petition is invalid, procedurally or substantively. in which the national labor organization revokes the charter of the local union that holds the certification during a *Montrose* proceeding.
- e. where a very small percentage of the employees are union members and vote for reaffiliation, raising the possibility that there is a question as to continued majority status that affects the continuity of representation criteria.

58.3.21 claims of certification bars in successorship (*RCL 12A*);

58.3.22 effect of a finding of successorship on contract bars (*RCL 12B4*);

58.3.23 effect of a contract on timeliness issues such as: (*RCL 12E*);

- a. filing a petition untimely
- b. timeliness of amending a petition in unique circumstances;

58.4 **Clearance** means that the Regional Director obtains approval before taking the following actions:

58.4.1 issue a certification, clarification, amendment, or revocation while a case is pending appeal before the Authority ([CHM 53.4.1](#));

58.4.2 defer an election pending an appeal of a Decision and Order and the Authority has not issued a stay ([CHM 55.1.2](#));

58.4.3 dismiss a petition or deny a request for intervention, after investigating a validity challenge and finding that the extent of fraud or improper method of solicitation tainted the entire showing of interest ([CHM 18.19.16b](#));

58.4.4 supervise, rather than conduct, any election ([CHM 28.8](#) and [32.1](#));

58.4.5 decide procedures for conducting an election when an activity refuses to provide the employees' mailing addresses ([CHM 28.23](#) and [43.2](#));

58.4.6 set a new eligibility date in runoff elections ([CHM 48](#));

58.4.7 enforce an investigatory subpoena ([CHM 23.5.3](#)) or a subpoena

issued during a hearing ([HOG 27.9](#)); or

58.4.8 transfer a petition that raises geographical jurisdiction issues ([CHM 8](#), [20.1.1](#), [63](#)).